

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DANIELLE and JESSIE KAY; JOHN and  
NANCY MORATIS; KAITLYN SLAVIC;  
and MARIA IANNOME,

Plaintiffs,

v.

WEST PENN MULTI-LIST, INC; EVEREST  
CONSULTING GROUP LP (d/b/a Berkshire  
Hathaway HomeServices The Preferred Realty);  
HOWARD HANNA COMPANY (d/b/a Howard  
Hanna); REEDSTONE, INC. (f/k/a Pirain  
Enterprises, Inc.) (d/b/a NextHome PPM Realty);  
MHDM LLC (d/b/a Realty ONE Group Gold  
Standard); SF, LLC (d/b/a Realty ONE Group  
Platinum); REALTY ONE GROUP HORIZON,  
LLC; RIVER POINT REALTY, LLC; BOVARD-  
ANDERSON CO.; and PRIORITY REALTY,  
LLC,

Defendants.

Civil Action No: 2:23-cv-02061

Judge William S. Stickman IV

**PLAINTIFFS' MOTION TO SUPPLEMENT BRIEFING ON MOTION TO DISMISS**

AND NOW, Plaintiffs, by and through undersigned counsel, file this Motion to Supplement Briefing on Motion to Dismiss, and in support thereof state the following:

1. On June 4, 2024, Defendants West Penn Multi-List, Inc. ("WPML"), Everest Consulting Group LP, and Howard Hanna Company (collectively the "Moving Defendants") filed a Motion to Dismiss the Second Amended Complaint (the "Motion to Dismiss", ECF # 121) and a Memorandum in Support (the "Memorandum", ECF # 123).

2. Following a Response in Opposition by the Plaintiffs (ECF # 130), the Moving Defendants filed a Reply in Support of the Motion to Dismiss (the “Reply”). ECF #139.

3. Both the Memorandum and the Reply argue that WPML’s rules cannot support a plausible antitrust conspiracy, and the case should therefore be dismissed. ECF # 123, p. 10; ECF # 139, p. 6. Notably, the Moving Defendants argue in the Memorandum that because Plaintiffs referenced some of WPML’s rules, all such rules are incorporated by reference and provide a link to the WPML rules. *See* ECF # 123 at 4, n.4 (<https://www.westpennmls.com/wp-content/uploads/RR-Cover-Page-TOC-2-23-2022.pdf>).

4. On July 31, 2024, while a decision on the Motion to Dismiss was pending, undersigned counsel visited WPML’s website and clicked on the link in the Memorandum.

5. The WPML rules had been removed from the website and replaced by a single page PDF which reads, in its entirety: “WPML Rules and Regulations Currently Under Construction Notice will appear on News and Alerts when they are made available again.”

6. Undersigned counsel has visited WPML’s web page each day since that time and the site continues to show no rules, but instead only the single-page PDF.

7. Because Moving Defendants rely on the alleged propriety of these rules, WPML’s decision to alter its website that it submitted to the Court as containing those purportedly exonerating rules is relevant to the Court’s decision about whether this case should continue to discovery.

8. Accordingly, the Plaintiffs ask that the Court allow it to supplement its briefing on the Moving Defendants’ Motion to Dismiss to include:

- a. The one-page PDF posted by West Penn Multi List, Inc. in the place of its Rules and Regulations;

- b. An affidavit or declaration explaining where the one-page PDF was found and subsequent repeated confirmation that it remained on the West Penn Multi-List, Inc. website; and
- c. Brief argument limited to two pages or less concerning the significance of WPML's removal of its avowedly wholly proper rules and regulations from its website.

Dated: August 2, 2024

/s/ D. McArdle Booker

Bruce C. Fox (PA 42576)  
Andrew J. Horowitz (PA 311949)  
D. McArdle Booker (PA 320890)  
OBERMAYER REBMANN  
MAXWELL & HIPPEL LLP  
525 William Penn Place, Suite 1710  
Pittsburgh, PA 15219  
(412) 556-1500 (Phone)  
(412) 281-1530 (Fax)

Joshua D. Snyder (PA 88657)\*  
Benjamin J. Eichel (PA 307078)\*  
BONI, ZACK & SNYDER LLC  
15 St. Asaphs Road  
Bala Cynwyd, PA 19004  
(610) 822-0200 (phone)  
(610) 822-0206 (fax)  
jsnyder@bonizack.com  
beichel@bonizack.com

*Counsel for Plaintiffs and the  
Proposed Class*

*\*Pro hac vice application  
forthcoming*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 2, 2024, this document was electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the attorneys of record registered with the CM/ECF system.

/s/ D. McArdle Booker  
D. McArdle Booker